Supreme Court, U.S.
FILED

941050 DEC 14 1994

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

IN RE: TRUST FOR THE BENEFIT OF JOHN HICKEY, a Minor.

BENNIE M. HICKEY,

Petitioner,

v.

THE ATTORNEY GENERAL OF THE STATE OF ILLINOIS AS INTERVENOR ON BEHALF OF THE ILLINOIS DEPARTMENT OF PUBLIC AID,

Respondent.

On Petition for a Writ of Certiorari to the Appellate Court of Illinois, First Judicial District

PETITION FOR A WRIT OF CERTIORARI

JOHN T. HICKEY
Counsel of Record
25900 North St. Mary's Road
Libertyville, Illinois 60048
(708) 362-3797

Attorney for Petitioner

Photex — 444 North Wabash Avenue — Chicago 60611 — 321-0223

QUESTIONS PRESENTED

1. Is a discretionary trust funded by the insurer of a medical malpractice defendant for the benefit of a disabled minor a "medicaid qualifying trust" prohibited by federal law?
2. Did the Illinois Appellate Court's finding that a discretionary trust was "created by" a disabled minor, although funded by another, violate his right to equal protection of the law guaranteed by the Fourteenth Amendment to the United States Constitution?

PARTIES TO THE PROCEEDING

The parties to the proceeding in the Illinois Appellate Court are those in the caption (Appellants in 92-2681) and the Illinois Attorney General as Appellee and Intervenor on behalf of the Illinois Department of Public Aid.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties to the Proceedings	\ii
Table of Authorities	iii
Opinions Below	1
Jurisdiction	2
Statutes and Constitutional Provisions Involved	3
Statement of Facts	5
Reasons for Granting the Petition ..	8
Conclusion	22

TABLE OF AUTHORITIES

Page

Cases

Department of Mental Health v. Phillips, 114 Ill.2d 85, 500 N.E.2d 29 (1986) 15-17

Doe v. Cowheard, 965 F.2d 109 (6th Cir. 1992) 21

In re Marriage of Diehl, 582 N.E.2d 281, 221 Ill.App.3d 410 20

In re P.M., 581 N.E.2d 720, 221 Ill.App.3d 93 (1991) 20

Kegel v. State, 830 P.2d 563 (N.M.App. 1992) 12-14

People v. Printy, 598 N.E.2d 346, 232 Ill.App.3d 735 (1992) 20

Shriners' Hospital v. Hester, 492 N.E.2d 153, 23 Ohio St.3d 198 (1986) 22

Trust Co. of Oklahoma v. State ex rel. Department of Human Services, 825 P.2d 1295 (Okl. 1991), certiorari denied, 113 S.Ct. 300 (Oct. 1992) 9-12

Constitutional Provisions and Statutes

U.S. Const. Amend. XIV 3,15,20

28 U.S.C. §1257(a) 2

42 U.S.C. §1396a(k) 4,10,11,13

Sec. 1210(b), Americans with Disabilities Act 3

State Statutes

Illinois Trusts and Trustees Act, Illinois Revised Statutes (1991), ch. 17, sec. 1685.1 17-18

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

ESTATE OF JOHN HICKEY, a Minor,

BENNIE M. HICKEY,

Petitioner

PETITION FOR A WRIT OF CERTIORARI

Petitioners hereby petition for a writ of certiorari to review the judgment of the Illinois Appellate Court, First District (4th Division).

OPINIONS BELOW

The opinion of the Illinois Appellate Court, First District (4th Division), is reported at 263 Ill.App.3d 658 (May 19, 1994).

JURISDICTION

The order of the Supreme Court of Illinois denying the petitioners leave to appeal was entered on October 6, 1994. On November 1, 1994, the Supreme Court of Illinois entered an order staying the mandate pending application for certiorari in the United States Supreme Court. This Court has jurisdiction under 28 U.S.C. §1257(a).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment XIV:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Americans With Disabilities Act, 42 U.S.C. §1210(b):

> It is the purpose of this Act to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.... [and] to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment ... in order to address the major areas of discrimination faced day-to-day by people with disabilities.

The Medicaid Act, 42 U.S.C. §1396a(k):

(k) Treatment of potential payments from medicaid qualifying trusts

(1) In the case of a medicaid qualifying trust (described in paragraph (2)), the amount from the trust deemed available to a grantor, for purposes of subsection (a)(17) of this section, is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the grantor, assuming the full exercise of discretion by the trustee or trustees for the distribution of the maximum amount to the grantor. For purposes of the previous sentence, the term "grantor" means the individual referred to in paragraph (2).

(2) For purposes of this subsection, a "medicaid qualifying trust" is a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust and the distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual.

Trusts and Trustees Act (Ill. Rev. Stat. 1991, ch. 17, par. 1651):

> "Trust for disabled beneficiary. A discretionary trust for the benefit of an individual who has a disability that substantially impairs the individual's ability to provide for his or her own care or custody and constitutes a substantial handicap shall not be liable to pay or reimburse the State or any public agency for financial aid or services to the individual except to the extent the trust was created by the individual or trust property has been distributed directly to or is otherwise under the control of the individual."

STATEMENT OF FACTS

As the result of severe anoxia suffered at birth the minor child is legally blind, mentally retarded, and epileptic.

His mother and guardian settled a cause of action for medical malpractice against his physician, and the settlement order was entered on January 29, 1992 by Judge Michael

J. Hogan of the Law Division of the Circuit Court of Cook County, Illinois. Among the provisions of Judge Hogan's order was that all settlement proceeds were to be payable to "the Acting Trustee of the John Hickey Trust." Chubb Insurance Company, the defendant doctor's insurer, had funded a discretionary trust for the benefit of the disabled minor, to provide for his needs for his lifetime (or until all funds were disbursed) and to supplement the care and services already available through public benefits and services.

On July 13, 1992, the plaintiff-appellant appeared before Judge Novoselsky in the Probate Division of the Circuit Court of Cook County, Illinois, to present the petition to approve the discretionary trust and a memorandum of law in support.

The petition to approve the trust was presented and heard the following day, July 14, 1992, and Judge Novoselsky entered an order denying the petition to approve the discretionary trust on that date.

An appeal was taken from Judge Novoselsky's Order of July 14, 1992 denying the petition to approve the discretionary trust, pursuant to Illinois Supreme Court Rule 304b(1). In an opinion and order dated May 19, 1994, the Illinois Appellate Court, First District-Fourth Division, affirmed. The Illinois Supreme Court denied leave to appeal on October 6, 1994. On November 1, 1994, the Illinois Supreme Court stayed its mandate pending application for certiorari to this Court.

REASONS FOR GRANTING THE PETITION

I.

THE ILLINOIS APPELLATE COURT ERRED IN FINDING THAT THE BENEFICIARY OF THE TRUST WAS IN FACT THE SETTLOR, RENDERING THE TRUST A "MEDICAID QUALIFYING TRUST" PROHIBITED BY FEDERAL LAW.

The Attorney General, as appellee and intervenor on behalf of the Illinois Department of Public Aid, contended before the Illinois Appellate Court that the instant discretionary trust created by Chubb Insurance Company for the benefit of the disabled minor is a "medicaid qualifying trust" in that the insurance company could not be viewed as the settlor of the trust because the funds comprising the trust were in fact owned by the beneficiary.

In rendering its decision, the Illinois Appellate Court adopted the position of the Illinois Attorney General that the instant discretionary trust is a "medicaid

qualifying trust" in that the beneficiary is "the true settlor of the trust." (Opinion at page 5).

There has been an irreconcilable conflict among the States about the creation of discretionary trusts for the benefit of injured minors in personal injury and medical malpractice litigation and whether such trusts are "medicaid qualifying trusts", but the majority of the States which have considered the issue have found that such trusts are not "medicaid qualifying trusts." In Trust Co. of Oklahoma v. State ex rel. Department of Human Services, 825 P.2d 1295 (Okl. 1991), certiorari denied, 113 S.Ct. 300 (Oct. 1992, the motion of Missouri, Montana and Nebraska for leave to file a brief as amici curiae is granted), the Supreme Court of Oklahoma found that a trust created for the primary

purpose of providing nonmedical support for an injured minor and containing a provision allowing the trustee discretion to provide medical care if the beneficiary ceases to qualify for medical assistance programs is not a "medicaid qualifying trust" under §1396a(k).

Ellen Lea Barker, a minor child, was permanently paralyzed from the neck down when the car in which she was a passenger was struck by a bus operated by Ganado Public School District (settlor). Barker's mother filed suit against the Ganado School District on the minor child's behalf. On May 18, 1981, the Arizona court entered an order approving the settlement of Barker's claim and pursuant to the settlement, $818,940.00 was paid to the appellant trust company of Oklahoma, to be held pursuant to a trust agreement reviewed and approved by the

Arizona court. When Barker's mother reapplied for medicaid benefits in 1985, she reported the existence of the trust. On May 29, 1987, the Department of Human Services notified the trust company that Barker's medical assistance benefits would be terminated as the trust fund (with a corpus of 1.2 million dollars in 1987) constituted an available resource to the minor.

Relying upon pertinent federal statutes, including U.S.C. §1396a(k), the Oklahoma Supreme Court dismissed the argument of the Department of Human Services that the trust was a medicaid qualifying trust within the meaning of U.S.C. 1396a(k). The court reasoned as follows:

> Other cases in which courts have found that a trust is an available resource are distinguishable from the facts presented here. *** Section 1396a(k) defines a medicaid qualifying trust as a non-testamentary trust created by an

> individual or the individual's spouse under which the individual is the beneficiary of all or part of the trust payments. Here, the settlor is not the beneficiary, Barker, but the tortfeasor, Ganada School District. Trust Co. of Oklahoma v. State ex rel. Department of Human Services, 825 P.2d 1295, 1302 note 31 (Okl. 1991).

In the instant trust, as in Trust Co. of Oklahoma v. State ex rel. Department of Human Services, 825 P.2d 1295, certiorari denied, 113 S.Ct. 300 (Oct. 1992), the settlor is not the beneficiary, but the tortfeasor's insurance company.

This majority view was again adopted specifically in a medical malpractice settlement. In Kegel v. State, 830 P.2d 563 (N.M.App. 1992), a seven-year old boy, Eric Kegel, was born with cerebral palsy and a seizure disorder, filed a medical malpractice action. The case was settled prior to trial and the settlement agreement

provided for a "trust fund to be established in Eric Kegel's behalf", of which his conservator would be trustee. The agreement described the trust as "providing discretionary supplemental benefits/support to the beneficiary beyond those available to him through any Federal, State, or local, or other private programs or funds." Kegel v. State, 830 P.2d 563, 565 (N.M.App. 1992).

The Court of Appeals of New Mexico found that 42 U.S.C. Section 1396a(k) did not authorize the Department's exclusion of Eric from eligibility for medicaid benefits and that the exclusion was contrary to law. In an analysis of Eric's role in creating the trust, the court found that the trust was created in part by the defendant tortfeasors in the medical malpractice action.

Finally, the court pointed out that Eric never had unrestricted legal or equitable title to the additional sums made available, and he himself played no role in the decision to create the trust. The court concluded that on the record before it there was too little to support a determination that Eric was the grantor of the trust. Kegel v. State, 830 P.2d 563, 568 (N.M.App. 1992).

In the instant case, as in Kegel v. State, 830 P.2d 563 (N.M.App. 1992), the trust was created by the defendant tortfeasor in the medical malpractice action and the minor played no role in the decision to create the trust. The instant trust also expressly identifies Chubb Insurance Company (the tortfeasor's insurer) as the grantor and the disabled minor as the beneficiary. Therefore, the Illinois Appellate Court's

contention that the instant trust is a "medicaid qualifying trust" is clearly erroneous and contrary to law.

II.

BY DISALLOWING THE DISCRETIONARY TRUST CREATED WITH FUNDS PROVIDED BY THE INSURER OF A MEDICAL MALPRACTICE DEFENDANT, WHILE PERMITTING SUCH TRUSTS WHEN FUNDED FROM OTHER SOURCES, THE APPELLATE COURT'S DECISION VIOLATED THE MINOR'S CONSTITUTIONAL RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT.

In a unanimous decision rendered in 1986, the Illinois Supreme Court held that a discretionary trust which provided a fund for a handicapped minor's education, maintenance, medical care, support and general welfare beyond that which the State "is willing or able to provide" was not part of a recipient's estate against which the State could bring a claim. Department of Mental Health v. Phillips, 114 Ill.2d 85, 94, 500 N.E.2d 29, 33-34 (1986).

In Phillips, a trust created by a mother for her handicapped son, Steven, was examined to determine whether it was part of Steven's "estate" and therefore to be used to reimburse the Department of Mental Health for Steven's care at the Waukegan Developmental Center. Although it was not clear from the express language of the trust "whether the settlor intended to establish a fund to provide services for Steven supplemental to the care provided by the State, or whether her intent was simply to provide for Steven's support regardless of whether or not Steven is in a public institution," the Illinois Supreme Court examined the circumstances surrounding the execution of the trust instrument and concluded that the settlor intended "to provide that which the Department was unwilling or unable to furnish." Department

of Mental Health v. Phillips, 114 Ill.2d 85, 94, 500 N.E.2d 29, 33-34 (1986).

The Illinois Supreme Court's endorsement of supplemental needs trusts in Phillips to provide care supplemental to the care provided by the State was later enacted as legislation by the Illinois General Assembly when, effective September 6, 1991, Illinois law was amended to provide for the creation of a discretionary trust for the benefit of persons with substantial handicaps. Public Act 87-311 amended the Trusts and Trustees Act by adding Section 15.1 as follows:

> §15.1. Trust for disabled beneficiary. A discretionary trust for the benefit of an individual who has a disability that substantially impairs the individual's ability to provide for his or her own care or custody and constitutes a substantial handicap shall not be liable to pay or reimburse the State or any public agency for financial aid or services to the

> individual except to the extent the trust was created by the individual or trust property has been distributed directly to or is otherwise under the control of the individual. Property, goods and services purchased or owned by a trust for and used or consumed by a disabled beneficiary shall not be considered trust property distributed to or under the control of the beneficiary. A discretionary trust is one in which the trustee has discretionary power to determine distributions to be made under the trust. (Ill. Rev. Stat. (1991), ch. 17, §1685.1).

This amendment adopted without opposition by the Illinois General Assembly, and effective September 6, 1991, clearly and unequivocally permitted discretionary trusts to be created for the benefit of persons, including disabled minors, with substantial handicaps.

The instant trust agreement is clear in identifying Chubb Insurance Company as the settlor and the minor as the beneficiary, but the Illinois Appellate Court found that

the trust was created by the beneficiary, within the meaning of Section 15.1 of the Trusts and Trustees Act (Opinion at page 5).

Section 15.1, has no restrictive language indicating what persons can or cannot be grantors of discretionary trusts. Without such a restriction in the language of the statute itself, The Appellate Court's reasoning allowing a family member to create a discretionary trust for the benefit of a disabled minor, but not the insurer for a tortfeasor that allegedly caused the condition which handicapped the minor, cannot stand. The statute's "plain and ordinary meaning" allows a third party, such as an insurer of a medical malpractice defendant, to be the grantor of a discretionary trust.

To suggest, as the Illinois Appellate Court has, that a discretionary trust can be

created by a parent and not by the insurer of a tortfeasor would result in a construction of the statute which produces an unequal operation of its terms.

A statute should be construed so that as nearly as possible it will have uniform application and those affected by it will receive uniform treatment. Graham v. Board of Ed. of Comm. High School Dist. No. 77 of St. Clair County, 305 N.E.2d 310, 15 Ill.App.3d 1092 (1973).

The Fourteenth Amendment requires equal treatment between groups of persons similarly situated. People v. Printy (2d Dist. 1992), 598 N.E.2d 346, 174 Ill.Dec. 149, 232 Ill.App.3d 735; In re Marriage of Diehl (2d Dist. 1991), 582 N.E.2d 281, 164 Ill.Dec. 73, 221 Ill.App.3d 410; In re P.M. (5th Dist. 1991), 581 N.E.2d 720, 163 Ill.Dec. 566, 221 Ill.App.3d 93.

The State has advanced no rational basis for distinguishing between trusts for persons with substantial handicaps that are funded by malpractice insurers and trusts that are funded by other sources. Doe v. Cowheard, 965 F.2d 109 (6th Cir. 1992).

The discriminatory effect of the Illinois Appellate Court's interpretation of Section 15.1 of the Trusts and Trustees Act also runs afoul of the stated purpose of the Americans With Disabilities Act, which seeks the elimination of all forms of discrimination against persons with disabilities.

Thus, by operation of the Appellate Court's interpretation of Section 15.1, a select class of persons with substantial handicaps, those who are the beneficiaries of trusts created by the insurers of medical malpractice tortfeasors, will be deprived of

discretionary trusts, even though such trusts are entirely legitimate. Shriners' Hospital v. Hester, 492 N.E.2d 153, 23 Ohio St.3d 198 (1986).

CONCLUSION

For the foregoing reasons, the petitioners respectfully petition this Court to grant certiorari and pray that this Honorable Court reverse the judgment of the Illinois Supreme Court.

Respectfully submitted,

JOHN T. HICKEY
25900 N. St. Mary's Road
Libertyville, Illinois 60048
(708) 362-3797
Counsel for Petitioner

APPENDIX

Fourth Division
May 19, 1994

NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 1-92-2681

In re Estate of JOHN HICKEY, a minor. BENNIE M. HICKEY	) Appeal from the) Circuit Court of) Cook County.)) Honorable) Benjamin E.) Novoselsky,) Judge Presiding

PRESIDING JUSTICE CAHILL delivered the opinion of the court:

The issue framed by this appeal is whether a trust created from proceeds of a personal injury lawsuit can be worded to exempt the trust from reimbursement claims of government agencies that provide aid to disabled persons. The trial court ruled that such trusts are prohibited under Illinois law and refused to approve the trust in this case. We agree and affirm.

John Hickey is disabled. He suffered a traumatic loss of oxygen in the course of his birth in 1977. He is blind, retarded, and epileptic. He will always require

special care and currently receives federal financial assistance.

Bennie Hickey, John's mother, filed a lawsuit on his behalf against the doctor who delivered John. A settlement was reached. It provided that the doctor's insurance company would place $113,000 in trust for John. The insurer is the named settlor of the trust. Bennie Hickey and NBD Trust Company are the co-trustees. John is the beneficiary. The stated purpose of the trust is to supplement John's needs. The trust agreement reads in part:

> "No payments shall be made for any expense or need which would otherwise be satisfied by any form of local, state or federal assistance program, or from any other public or private agencies for any beneficiary hereunder. This trust has been expressly established to cover supplemental expenses over and above the maximum benefits allowable from any local, state or federal assistance program, or from any other public or private agencies. *** For the purposes of determining eligibility for such benefits no part of the trust income or principal shall be considered nor shall be available to any beneficiary hereunder."

This language, and language like it, has been the subject of litigation in other jurisdictions, often in cases that address the conflict between "supplemental need"

trusts for disabled persons and the requirement that a particular recipient of public assistance exhaust personal resources before he or she becomes eligible for government help. (See Trust Company of Oklahoma v. State of Oklahoma (1991), 825 P.2d 1295; Barham by Barham v. Rubin (1991), 816 P.2d 965; Hatcher v. Department of Health and Rehabilitative Services (1989), 545 So.2d 400.) The issue here is resolved by the language of the trust itself. The trust provides that the "laws of Illinois shall govern the validity and interpretation of the provisions of this agreement." In Illinois, the Trusts and Trustees Act (Ill. Rev. Stat. 1991, ch. 17, par. 1651 et seq.) applies to all trusts. Section 15.1 of the Act states:

> "Trust for disabled beneficiary. A discretionary trust for the benefit of an individual who has a disability that substantially impairs the individual's ability to provide for his or her own care or custody and constitutes a substantial handicap shall not be liable to pay or reimburse the State or any public agency for financial aid or services to the individual except to the extent the trust was created by the individual or trust property has been distributed directly to or is otherwise under the control of the individual." (Emphasis added.) Ill. Rev. Stat. 1991, ch. 17, par. 1685.1.

Bennie Hickey filed a petition with the probate court in 1992 to approve the trust and appoint her guardian. When a personal injury lawsuit for the benefit of a minor is settled for $5,000 or more, the administrative procedures of the Circuit Court of Cook County require that the probate division administer the settlement and appoint a guardian. The probate court allowed Bennie Hickey to be appointed guardian, but denied the petition to approve the settlement. The court ruled that the prohibited distributions of the trust violated section 15.1 of the Trusts and Trustees Act (Ill. Rev. Stat. 1991, ch. 17, par. 1651 et seq.) The court ruled that the trust funds were improperly exempted from liability to pay or reimburse the State or public agencies for financial aid because the creator of the trust was, in fact, John Hickey--the disabled "individual." His estate appeals this order.

Appellant argues in its brief: "If the instant trust were created by John Hickey, the disabled minor, and not by the [insurer], [the court's] position would be understandable. But the trust instrument is clear in identifying [the insurer] as the grantor and John Hickey as the beneficiary."

What the argument fails to consider is that the trust language here is nothing more than an attempt to disguise the actual settlor. One who furnishes consideration for the creation of a trust is the settlor, even though, in form, the trust is created by another. (Stewart v. Merchants National Bank of Aurora (1972), 3 Ill. App. 3d 337, 338, 278 N.E.2d 10, 12.) In Stewart, a trust was

created from the settlement funds of a personal injury lawsuit. Its purpose was to pay in part for the rehabilitation of the plaintiff. The plaintiff's attorney designated himself as the settlor and the plaintiff as the beneficiary. The court held that the plaintiff beneficiary was, in fact, the settlor of the trust. Stewart, 3 Ill. App. 3d at 338, 278 N.E.2d at 12; see also Teeple v. Hunziker (1983), 118 Ill. App. 3d 492, 454 N.E.2d 1174.

As in Stewart, the personal injury plaintiff and beneficiary here is the true settlor of the trust. John furnished consideration for the creation of the trust when he exchanged his chose in action against the doctor for the settlement funds deposited in the trust.

A settlement agreement is void if it is contrary to law. (In re Estate of Braun (1991), 222 Ill. App. 3d 178, 583 N.E.2d 633.) The trust created by the settlement here is contrary to section 15.1 of the Trust and Trustees Act. The trust attempts to exempt its funds from reimbursement claims of State or public agencies for financial assistance. This violates the statute's provision that where the disabled person establishes the trust, it is not exempted from liability.

Affirmed.

JOHNSON and HOFFMAN, JJ., concur.

No. 77446

IN THE
SUPREME COURT OF ILLINOIS

Estate of John Hickey, a Minor)	
Bennie M. Hickey,)	AC1-92-2681
)	
Petitioner)	

ORDER

Petition for leave to appeal as a matter of right or leave to appeal denied.

Dated: Oct. 6, 1994
Chicago

No. 77446

IN THE
SUPREME COURT OF ILLINOIS

Estate of John Hickey, a Minor)	
Bennie M. Hickey,)	AC1-92-2681
)	
Petitioner)	

ORDER

This matter has come for consideration upon the motion of petitioner to stay the mandate of this Court pending appeal or application for certiorari in the United States Supreme Court.

IT IS ORDERED that the mandate of this Court in the above cause is stayed pending the filing of a notice of appeal or an application for certiorari or the expiration of the period within which said application or notice may be filed. If certiorari is applied for or notice of appeal filed, the mandate of this Court shall, upon proof of such filing being made by affidavit filed with the clerk of this Court, be further stayed pending resolution by the United States Supreme Court of such application or appeal. If no such affidavit is filed, the mandate shall, without further order, issue upon the expiration of the time within which appeal or certiorari may be sought.

/s/ CHARLES E. FREEMAN
Justice, Supreme Court of Illinois

FILED
Nov. 1, 1994
Chicago
Supreme Court Clerk